

# *Peru-Bolivian Confederation*<sup>1</sup>

## PEACE, FRIENDSHIP, COMMERCE, AND NAVIGATION

*Treaty signed at Lima November 30, 1836*

*Ratified by the Peru-Bolivian Confederation January 10, 1837*

*Senate advice and consent to ratification October 10, 1837*

*Ratified by the President of the United States October 14, 1837*

*Ratifications exchanged at Lima May 28, 1838*

*Entered into force May 28, 1838*

*Proclaimed by the President of the United States October 3, 1838*

*Replaced, for Peru, July 16, 1852, by treaty of July 26, 1851*<sup>2</sup>

*Replaced, for Bolivia, November 9, 1862, by treaty of May 13, 1858*<sup>3</sup>

8 Stat. 487; Treaty Series 274<sup>4</sup>

### GENERAL CONVENTION OF PEACE, FRIENDSHIP, COMMERCE AND NAVIGATION, BETWEEN THE UNITED STATES OF AMERICA AND THE PERU-BOLIVIAN CONFEDERATION

The United States of America and the Peru-Bolivian Confederation, desiring to make firm and permanent the peace and friendship which happily subsist between them,—have resolved to fix, in a clear, distinct, and positive manner, the rules which shall in future be religiously observed between the one and the other, by means of a Treaty, or General Convention of Peace, Friendship, Commerce and Navigation.

For this desirable purpose, the President of the United States of America has conferred full powers on Samuel Larned, Chargé d’Affaires of the said

---

<sup>1</sup> See also BOLIVIA, *ante*, vol. 5, p. 721, and PERU, *post*, p. 999.

<sup>2</sup> TS 276, *post*, p. 1002. The Peru-Bolivian Confederation did not last beyond January 1839. On Nov. 23, 1839, the Peruvian Congress declared the 1836 treaty not binding on PERU, but the United States was not so informed until 1847.

<sup>3</sup> TS 32, *ante*, vol. 5, p. 721, BOLIVIA.

<sup>4</sup> For a detailed study of this treaty, see 4 Miller 71.

States near the Government of Peru, and the Supreme Protector of the North and South Peruvian States, President of the Republic of Bolivia, encharged with the direction of the foreign relations of the Peru-Bolivian Confederation,—has conferred like powers on John Garcia del Rio, Minister of State in the Department of Finance, of the North Peruvian State:—who after having exhibited to each other their respective full powers,—found to be in due and proper form,—and exchanged certified copies thereof, have agreed to the following articles, to wit,

#### ARTICLE I

There shall be a perfect, firm, and inviolable peace, and sincere friendship, between the United States of America and the Peru-Bolivian Confederation;—in all the extent of their respective territories and possessions;—and between their people and citizens, respectively, without distinction of persons or places.

#### ARTICLE II

The United States of America and the Peru-Bolivian Confederation, desiring to live in peace and harmony, as well with each other as with all the Nations of the earth, by means of a policy frank and equally friendly with all, engage, mutually, not to concede any particular favor to other nations, in respect of commerce and navigation,—which shall not immediately become common to the other party to this Treaty; who shall enjoy the same freely, if the concession was freely made, or on allowing the same compensation, if the concession was conditional.

#### ARTICLE III

The two high contracting parties, being likewise desirous of placing the commerce and navigation of their respective countries on the liberal basis of perfect equality with the most favored nation, mutually agree, that the citizens of each may frequent with their vessels all the coasts and countries of the other, and may reside and trade there, in all kinds of produce, manufactures and merchandize, not prohibited to all; and shall pay no other or higher duties, charges, or fees, whatsoever, either on their vessels or cargoes, than the citizens or subjects of the most favored are, or shall be, obliged to pay, on their vessels and cargoes:—and they shall enjoy, respectively, all the rights, privileges and exemptions, in navigation and commerce, which the citizens or subjects of the most favored nation do, or shall enjoy; they submitting themselves to the laws, decrees and usages there established, to which such citizens or subjects are, of right, subjected.

But it is understood that the stipulations contained in this article, do not include the coasting trade of either of the two countries; the regulation of this trade being reserved by the parties, respectively, according to their own separate laws.

## ARTICLE IV

It is likewise agreed that it shall be wholly free for all merchants, commanders of ships, and other citizens, of both countries, to manage, themselves, their own business;—in all the ports and places subject to the jurisdiction of the other, as well with respect to the consignment and sale of their goods and merchandize, as to the purchase of their returns, unloading, loading, and sending off, of their vessels. The citizens of neither of the contracting parties shall be liable to any embargo, nor to be detained with their vessels, cargoes, merchandize or effects, for any military expedition, nor for any public or private purpose whatever,—without being allowed therefor a sufficient indemnification. Neither shall they be called upon for any forced loan, or occasional contributions—nor be subject to military service, on land or sea.

## ARTICLE V

Whenever the citizens of either of the contracting parties, shall be forced to seek refuge, shelter or relief, in the rivers, bays, ports, and dominions of the other, with their vessels, whether of war, (public or private) of trade, or employed in the fisheries,—through stress of weather, want of water or provisions, pursuit of pirates or enemies,—they shall be received, and treated with humanity; and all favor and protection shall be given to them, in the repairing of their vessels, procuring of supplies, and placing of themselves in a condition to pursue their voyage, without obstacle or hindrance.

## ARTICLE VI

All ships, merchandize, and effects, belonging to citizens of one of the contracting parties, which may be captured by pirates, whether on the high seas, or within the limits of its jurisdiction, and may be carried or found in the rivers, roads, bays, ports, or dominions of the other,—shall be delivered up to the owners; they proving, in due and proper form, their rights, before the competent tribunals: it being understood, that the claim should be made within the term of two years; by the parties themselves, their attornies, or the agents of their respective governments.

## ARTICLE VII

Whenever any vessel belonging to the citizens of either of the contracting parties shall be wrecked, founder, or suffer damage, on the coasts, or within the dominions, of the other, all assistance and protection shall be given to the said vessel, her crew, and the merchandize on board;—in the same manner as is usual and customary with vessels of the nation, where the accident happens, in like cases: and it shall be permitted to her, if necessary, to unload the merchandize and effects on board, with the proper precautions to prevent their illicit introduction, without exacting, in this case, any duty impost, or contribution, whatever; provided the same be exported.

## ARTICLE VIII

The citizens of each of the contracting parties, shall have power to dispose of their personal effects, within the jurisdiction of the other, by sale, donation, testament, or otherwise; and their representatives, being citizens of the other party, shall succeed to their said personal effects, whether by testament or *ab intestato*; and may take possession thereof, either themselves, or by others acting for them; and dispose of the same at their will;—paying such dues, only, as the inhabitants of the country wherein said effects are, shall be subject to pay in like cases. And if, in the case of real estate, the said heirs should be prevented from entering into possession of the inheritance, on account of their character as aliens, there shall be granted to them the term of three years, in which to dispose of the same, as they may think proper, and to withdraw the proceeds; which they may do without obstacle, and exempt from all charges, save those which are imposed by the laws of the country.

## ARTICLE IX

Both the contracting parties solemnly promise and engage, to give their special protection to the persons and property of the citizens of each other, of all classes and occupations, who may be in the territories subject to the jurisdiction of the one or the other, transient or dwelling therein:—leaving open & free to them the tribunals of justice, for their judicial recourse, on the same terms as are usual and customary with the natives, or citizens, of the country in which they may be: for which purpose they may employ in defence of their rights, such advocates, solicitors, notaries, agents and factors as they may judge proper, in all their trials at law: and such citizens or agents shall have free opportunity to be present at the decisions and sentences of the tribunals, in all cases that may concern them; and, likewise, at the taking of all evidence and examinations that may be exhibited in the said trials.

And to render more explicit, and make more effectual, the solemn promise and engagement herein before mentioned,—under circumstances to which one of the parties thereto has heretofore been exposed,—it is hereby further stipulated and declared, that all the rights and privileges which are now enjoyed by, or may hereafter be conferred on, the citizens of one of the contracting parties by, or in virtue of the Constitution and laws of the other, respectively;—shall be deemed and held to belong to, and inhere in, them, until such rights and privileges shall have been abrogated or withdrawn by an authority constitutionally or lawfully competent thereto.

## ARTICLE X

It is likewise agreed, that perfect and entire liberty of conscience shall be enjoyed by the citizens of both the contracting parties, in the countries subject to the jurisdiction of the one and the other; without their being liable to be disturbed or molested on account of their religious belief, so long as they

respect the laws, and established usages of the country. Moreover, the bodies of the citizens of one of the contracting parties who may die in the territories of the other, shall be buried in the usual burying grounds, or in other decent and suitable places; and shall be protected from violation or disturbance.

#### ARTICLE XI

It shall be lawful for the citizens of the United States of America and of the Peru-Bolivian Confederation, to sail with their ships, with all manner of liberty and security,—no distinction being to be made who are the proprietors of the merchandize laden therein,—from any port or place, whatever, to the ports and places of those who are now, or hereafter shall be, at enmity with either of the contracting parties. It shall likewise be lawful for the citizens aforesaid, to sail with the ships and merchandize before mentioned, and to trade, with the same liberty and security, from the places, ports and havens of those who are enemies of both, or of either party,—without any opposition or disturbance whatsoever,—not only directly from the places of the enemy, before mentioned, to neutral places; but, also, from one place belonging to an enemy to another place belonging to an enemy; whether they be under the jurisdiction of one power or under that of several. And it is hereby stipulated, that free ships shall give freedom to goods; and that every thing shall be deemed to be free and exempt which shall be found on board of the ships belonging to the citizens of either of the contracting parties, although the whole lading, or any part thereof, should appertain to the enemies of either,—goods contraband of war being always excepted. It is also agreed, in like manner, that the same liberty shall be extended to persons who are on board of a free ship;—with this effect, that, although they be enemies to both or either of the parties, they shall not be taken out of that free ship, unless they are officers or soldiers, and in the actual service of the enemy:—provided, however; and it is hereby further agreed, that the stipulations in this article contained, declaring that the flag shall cover the property, shall be understood as applying to those Powers, only, who recognise this principle: but if either of the contracting parties shall be at war with a third, and the other be neutral, the flag of the neutral shall cover the property of those enemies whose governments acknowledge this principle, and not that of others.

#### ARTICLE XII

It is likewise agreed, that in cases where the neutral flag of one of the contracting parties shall protect the property of the enemies of the other, in virtue of the above stipulation,—it shall always be understood, that the neutral property found on board of such enemy's vessel, shall be held and considered as enemy's property; and as such shall be liable to detention and confiscation;—except such property as was put on board of such vessels before the declaration of war, or even afterwards, if it were done without the knowledge

of such declaration; but the contracting parties agree, that six months having elapsed, after the declaration, their citizens shall not be allowed to plead ignorance thereof. On the contrary, if the flag of the neutral does not protect the enemy's property on board, in this case, the goods and merchandize of the neutral, embarked in such enemy's ship, shall be free.

#### ARTICLE XIII

This liberty of navigation and commerce shall extend to all kinds of merchandize; excepting, only, those which are distinguished by the name of contraband, or prohibited, goods:—under which name shall be comprehended,—1<sup>st</sup> cannons, mortars, howitzers, swivels, blunderbusses, muskets, fusees, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberds, granades and bombs; powder, matches, balls, and all other things belonging to the use of these arms. 2<sup>dly</sup> Bucklers, helmets, breastplates, coats-of-mail, infantry belts, and clothes made up in a military form, and for a military use. 3<sup>dly</sup> Cavalry belts, and horses with their furniture. 4<sup>thly</sup> and generally, all kinds of arms and instruments of iron, steel, brass and copper, or of any other materials, manufactured, prepared and formed expressly for the purposes of war—either by sea or land.

#### ARTICLE XIV

All other merchandize and things, not comprehended in the articles of contraband explicitly enumerated and classified as above, shall be held and considered as free, and subjects of free and lawful commerce; so that they may be carried and transported, in the freest manner, by both the contracting parties;—even to places belonging to an enemy;—excepting, only, those places which are at that time, besieged or blockaded: and, to avoid all doubt in this particular, it is declared, that those places, only, are besieged, or blockaded, which are actually attacked by a force capable of preventing the entry of the neutral.

#### ARTICLE XV

The articles of contraband, of those before enumerated and classified, which may be found in a vessel bound for an enemy's port, shall be subject to detention and confiscation; but the rest of the cargo, and the ship, shall be left free, that the owners may dispose of them as they see proper. No vessel, of either of the contracting parties, shall be detained on the high seas, on account of having on board articles of contraband, whenever the master, captain, or supercargo of said vessel will deliver up the articles of contraband to the captor; unless, indeed, the quantity of such articles be so great, and of so large a bulk, that they cannot be received on board of the capturing vessel without great inconvenience:—but in this, and all other cases of just detention, the vessel detained shall be sent to the nearest convenient and safe port, for trial and judgment, according to law.

## ARTICLE XVI

And whereas it frequently happens, that vessels sail for a port or place belonging to an enemy, without knowing that the same is besieged, blockaded or invested,—it is agreed, that every vessel so circumstanced, may be turned away from such port or place, but shall not be detained;—nor shall any part of her cargo,—if not contraband,—be confiscated; unless, after being warned of such blockade or investment, by the commanding officer of a vessel forming part of the blockading forces,—she shall again attempt to enter:—but she shall be permitted to go to any other port or place the master or supercargo shall think proper. Nor shall any vessel, of either party, that may have entered into such port or place before the same was actually besieged, blockaded, or invested, by the other, be restrained from quitting it, with her cargo; nor if found therein, before or after the reduction and surrender, shall such Vessel, or her cargo, be liable to seizure, confiscation, or any demand on the score of redemption or restitution:—but the owners thereof shall be allowed to remain in the undisturbed possession of their property. And if any vessel, having thus entered the port before the blockade took place, shall take on board a Cargo, after the blockade be established, and attempt to depart, she shall be subject to being warned by the blockading forces, to return to the port blockaded, and discharge the said cargo; and if, after receiving said warning, the vessel shall persist in going out with the cargo, she shall be liable to the same consequences to which a vessel attempting to enter a blockaded port, after being warned off by the blockading forces, would be liable.

## ARTICLE XVII

To prevent all kinds of disorder and irregularity in the visiting and examining of the ships and cargos, of both the contracting parties, on the high seas, they have agreed, mutually, that whenever a vessel of war, public or private, shall meet with a neutral, of the other contracting party, the first shall remain at the greatest distance compatible with the possibility and safety of making the visit, under the circumstances of wind and sea, and the degree of suspicion attending the vessel to be visited; and shall send one of her small boats, with no more men than those necessary to man it, for the purpose of executing the said examination,—of the papers concerning the ownership and cargo of the vessel,—without causing the least extortion, violence, or ill treatment; in respect of which, the commanders of said armed vessels shall be responsible, with their persons and property; for which purpose, the commanders of said private armed vessels shall, before receiving their commissions,—give sufficient security, to answer for all the injuries and damages they may commit. And it is expressly agreed, that the neutral party shall in no case be required to go on board the examining vessel, for the purpose of exhibiting the ships papers; nor for any other purpose whatever.

## ARTICLE XVIII

To avoid all vexation and abuses in the examination of the papers relating to the ownership of the vessels belonging to the citizens of the contracting parties;—they have agreed, and do agree, that, in case one of them should be engaged in war, the ships and vessels of the other must be furnished with sea-letters, or passports;—expressing the name, property and burden of the ship; as also the name and place of residence of the master or commander thereof; in order that it may thereby appear that the said ship really and truly belongs to the citizens of one of the parties. They have likewise agreed, that such ships, being laden, besides the said sea-letters or passports, shall be provided with certificates containing the several particulars of the cargo, and the place whence the ship sailed;—so that it may be known whether any contraband or prohibited goods are on board of the same:—which certificates shall be made out by the officers of the place whence the ship sailed, in the accustomed form, without which requisites, the said Vessel may be detained, to be adjudged by the competent tribunals: and may be declared a legal prize,—unless the said defect shall be proved to be owing to accident, or be satisfied or supplied by testimony entirely equivalent, in the opinion of said tribunals; to which ends, there shall be allowed a sufficient term of time for its procurement.

## ARTICLE XIX

And it is further agreed, that the stipulations above expressed, relative to the visiting and examining of vessels, shall apply to those, only, which sail without convoy, and when said Vessels shall be under convoy, the verbal declaration of the commander of the convoy, on his word-of-honor, that the vessels under his protection belong to the nation whose flag he carries, and, when they are bound to an enemy's port, that they have no contraband goods on board, shall be sufficient.

## ARTICLE XX

It is moreover agreed, that, in all cases, the established Courts for prize causes, in the country to which the prize may be conducted, shall, alone, take cognizance of them. And whenever such tribunal, or court, of either party, shall pronounce judgment against any vessel, goods, or property, claimed by citizens of the other party,—the sentence, or decree, shall mention the reasons, or motives, in which the same shall have been founded:—and an authenticated copy of the sentence, or decree, and of all the proceedings in the case, shall, if demanded, be delivered to the commander, or agent, of said Vessel or property; without any excuse or delay;—he paying the legal fees for the same.

## ARTICLE XXI

Whenever one of the contracting parties shall be engaged in war with another State, no citizen of the other contracting party, shall accept a com-



mission, or letter-of-marque, for the purpose of assisting, or cooperating hostilely with the said enemy, against the said party so at war; under pain of being treated as a pirate.

#### ARTICLE XXII

If at any time a rupture should take place between the two contracting Nations, and (which God forbid) they should become engaged in war with each other, they have agreed, and do agree now, for then, that the merchants, traders, and other citizens, of all occupations of each of the two parties, residing in the Cities, ports and dominions of the other, shall have the privilege of remaining and continuing their trade and business therein, and shall be respected and maintained in the full and undisturbed enjoyment of their personal liberty and property; so long as they behave peaceably and properly, and commit no offence against the laws. And in case their conduct should render them suspected of male-practices, and, having thus forfeited this privilege, the respective Governments should think proper to order them to depart, the term of twelve months from the publication, or intimation of this order therefor, shall be allowed them, in which to arrange and settle their affairs, and remove with their families, effects and property; to which end, the necessary safe conduct shall be given to them, and which shall serve as a sufficient protection until they arrive at the designated port and there embark. But this favor shall not be extended to those who shall act contrary to the established laws. It is nevertheless to be understood, that the persons so suspected, may be ordered, by the respective Governments, to remove forthwith into the interior, to such places as they shall think fit to designate.

#### ARTICLE XXIII

Neither the debts, due from individuals of the one Nation to the individuals of the other, nor shares, nor money, which they may have in public funds, nor in public or private Banks, shall ever, in any event of war or national difference, be sequestered or confiscated.

#### ARTICLE XXIV

Both the contracting parties being desirous of avoiding all inequality in relation to their public communications and official intercourse, they have agreed, and do agree, to grant to their Envoys, Ministers, and other public Agents the same favors, immunities and exemptions as those of the most favored Nation do, or shall enjoy:—it being understood, that whatever favors, immunities, or privileges the United States of America, or the Peru-Bolivian confederation, may find it proper to grant to the Envoys, Ministers, and public Agents of any other Power, shall by the same act, be granted and extended to those of the contracting parties respectively.

## ARTICLE XXV

To make more effectual the protection which the United States of America and the Peru-Bolivian confederation shall afford in future to the navigation and commerce of the citizens of each other;—they agree to receive and admit Consuls and Vice Consuls, in all the ports open to foreign commerce; who shall enjoy within their respective consular districts, all the rights, prerogatives and immunities of the Consuls and Vice Consuls of the most favored Nation; each contracting party however, remaining at liberty to except those ports and places in which the admission and residence of such functionaries may not seem convenient.

## ARTICLE XXVI

In order that the Consuls and Vice-Consuls of the two contracting parties may enjoy the rights, prerogatives and immunities which belong to them by their public character, they shall before entering on the exercise of their functions, exhibit their commission, or patent, in due form, to the government to which they are accredited, and having received their *exequatur*, they shall be held and considered as such Consuls and Vice Consuls, by all the authorities, magistrates and inhabitants in the Consular district in which they reside.

## ARTICLE XXVII

It is likewise agreed that the Consuls, Vice Consuls, their secretaries, officers, and persons attached to their service;—they not being Citizens of the country in which the Consul, or Vice Consul resides, shall be exempt from all public service, and also from all kinds of taxes, imposts and contributions, except those which they shall be obliged to pay on account of commerce, or their property; and from which the Citizens of their respective country, resident in the other, are not exempt, in virtue of the stipulations contained in this treaty:—they, being, in every thing besides, subject to the laws of the respective States. The archives and Papers of the Consulates shall be respected inviolably, and under no pretext, whatever, shall any magistrate, or other person, seize, or in any way interfere with them.

## ARTICLE XXVIII

The said Consuls and Vice-Consuls shall have power to require the assistance of the authorities of the country, for the arrest, detention and custody, of deserters from the public and private vessels of their country; and for this purpose, they shall address themselves to the Courts, Judges, or officers competent, and shall demand the said deserters in writing; proving, by an exhibition of the ship's roll, or other public document, that the men so demanded, are part of the crew of the vessel from which it is alledged they have deserted: and, on this demand, so proved, (saving however, when the

contrary is more conclusively proved) the delivery shall not be refused. Such deserters, when arrested, shall be put at the disposal of the said Consuls or Vice-Consuls, and may be put in the public prisons, at the request and expense of those who reclaim them, to be sent to the ships to which they belong;—or to others of the same nation: but if they should not be so sent within two months, to be counted from the day of their arrest,—they shall be set at liberty, and shall be no more arrested for the same cause.

#### ARTICLE XXIX

For the purpose of more effectually protecting their commerce and Navigation, the two contracting parties do hereby agree to form, as soon hereafter as may be mutually convenient, a Consular convention, which shall declare, specially, the powers and immunities of the Consuls and Vice Consuls of the respective parties.

#### ARTICLE XXX

The United States of America and the Peru-Bolivian Confederation, desiring to make as durable as circumstances will permit, the relations which are established between the two parties in virtue of this Treaty, or General Convention of Peace, Friendship, Commerce and Navigation, have declared solemnly, and do agree, as follows:

1<sup>st</sup> The present Treaty shall be in force for twelve years, from the day of the exchange of the ratifications thereof; and, further, until the end of one year after either of the contracting parties shall have given notice to the other of its intention to terminate the same each of them reserving to itself the right of giving such notice to the other, at the end of said term of twelve years. And it is hereby agreed between the parties, that, on the expiration of one year after such notice shall have been received by either of them, from the other, as above mentioned;—this Treaty shall, in all points relating to commerce and navigation, altogether cease and determine;—and in all those parts which relate to peace and friendship, it shall be permanently and perpetually binding on both Powers.

2<sup>ndly</sup> If any, one or more, of the citizens of either party shall infringe any of the articles of this Treaty, such citizen, or citizens, shall be held personally responsible therefor;—and the harmony and good correspondence between the two nations shall not be interrupted thereby; each party engaging, in no way to protect the offender or offenders, or to sanction such violence;—under pain of rendering itself liable for the consequences thereof.

3<sup>rdly</sup> If, (which indeed cannot be expected) unfortunately, any of the stipulations contained in the present Treaty shall be violated, or infringed, in any other way whatever, it is expressly covenanted and agreed, that neither of the contracting parties will order or authorize, any act of reprisals, nor declare or make war against the other, on complaint of injuries or damages resulting

therefrom, until the party considering itself aggrieved shall first have presented to the other a statement or representation of such injuries or damages, verified by competent proofs,—and have demanded redress and satisfaction;—and the same shall have been either refused or unreasonably delayed.

<sup>4<sup>thly</sup></sup> Nothing in this treaty contained shall, however, be construed to operate contrary to former and existing public Treaties with other States or Sovereigns.

The present Treaty of Peace, Friendship, Commerce and Navigation shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the Supreme Protector of the North and South Peruvian States, President of the Republic of Bolivia, encharged with the direction of the foreign relations of the Peru-Bolivian Confederation;—and the ratifications shall be exchanged within eighteen Months from the date of the signature hereof;—or sooner if possible.

In faith whereof, we, the Plenipotentiaries of the United States of America, and the Peru-Bolivian Confederation, have signed and sealed these presents.

Done, in the City of Lima, on the thirtieth day of November in the year of Our Lord, One thousand eight hundred and thirty Six.

SAM. LARNED

[SEAL]

J. GARCIA DEL RIO

[SEAL]